



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/154,646	09/17/98	CUPP	C P97.2391

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IM22/1026

EXAMINER

HENDRICKS, K

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

10/26/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/154,646

Applicant(s)

Examiner

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 8-9-99.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-24 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-24 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____.

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

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DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection. The rejections are in response to applicants' amendment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

New claim 24 is rejected under 35 U.S.C. 102(b) as being anticipated by Simone et al., cited previously.

Simone et al. disclose an edible pet food product comprising a matrix which comprises cellulose (insoluble) fiber, gelatinized starch and protein components (see col. 3), and a humectant such as glycerin (col. 5). The dried sections of this product were then subdivided into pieces which were 2.75 inch in length, 1 inch wide, and .25 inch thick, for the final product (col. 8). This product is formulated for administration to a pet animal. Thus, the claimed method is anticipated by the reference, as the claim recites measurements of "at least 6 mm", and does not recite a moisture content.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simone et al., as cited above, in view of Hand et al., of record.

Simone et al. also teach that the cellulosic fiber materials of the pet food are used in the range of about 20-50% by weight of the final product.

Hand et al. teach of a chewy dry pet food, which is in the form of pellets, for both cats and dogs (col. 1). The product comprises a cohesive structural matrix containing proteins, starches, carbohydrates and fiber such as cellulose (col. 5). The starch is gelatinized ("plasticized"). The dried pellets thus produced have a moisture level of about 5-11% (col. 2, col. 7-8). At column 5, the reference states that the product may be in any of several shapes, and is preferred as a disc-shaped pellet having a thickness of about 0.32 to 0.70 inch (about 8mm to 17mm), and the example product was cut into about 12mm (0.5 inch) thick pellets to be consumed by a dog. Finally, the product has a density ranging from "about 10 to about 35 lbs/ft³" (160 to 560 kg/m³).

Thus, it would have been obvious to one of ordinary skill in the art to have utilized the teachings of both Simone et al. and Hand et al. to have produced the claimed invention of a dried pet food with chewy, minimal brittleness qualities, in a small common size and/or shape, with a variable amount of insoluble fiber such as cellulose. Fiber is often used as a filler, as taught by Hand et al., and given the teachings of the two references and the state of the prior art, may range widely in amount, based upon the other ingredients utilized, as well as the moisture content and texture desired, and would have been within the ordinary level of skill in the art to determine and

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utilize. Obviously, cat food, in general in the art, is and needs to be smaller than that of dogs, as most household cats are smaller than most household dogs. The production of the dry, yet chewy pet food product of Hand et al. is disclosed for both cats and dogs, and has a size "of at least 6mm" (instant claims). Regarding the specific densities and moisture content of the product claimed, Hand et al. teaches that the product have a density in the range of 160 to 560 kg/m³ which meets the claim limitations, and wherein the moisture content is from about 5-11%, also meeting the claim limitations.

Conclusion

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (703) 308-2959.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Lacey, can be reached on (703) 308-3535.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.


KEITH HENDRICKS
PRIMARY EXAMINER